

NOTICE OF PROPOSED REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections**

NOTICE IS HEREBY GIVEN that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to make specific time computation and preprison credits with regards to three strikes inmates who have been resentenced pursuant to *People v. Romero*, proposes to amend section 3371.1 in the California Code of Regulations (CRC), Title 15, Division 3 relating to Computation of Time and Preprison Credits.

PUBLIC HEARING:

Date and Time: February 1, 2002, 11:00a.m. - 12:00 p.m.
Place: Department of Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close February 1, 2002 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)322-3842; or by e-mail at clevangie@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**Colleen Levangie, Chief,
Regulation Management Unit
Telephone (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Kris Hubbard
Correctional Case Records Services
Telephone (916) 323-7401.**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate that requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed

or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action adopts provisions governing the calculation of credits for Three Strikes inmates who have been resentenced pursuant to People v. Romero. In this court case, "Three Strikes" inmates may request that the trial court revisit their sentence and strike one of their prior felonies resulting in a corresponding reduction in prison term and the need for resentencing.

Individual courts have the ability to change the original set of presentence credits granted when resentencing "Romero" cases, thereby granting excessive conduct credits. Pursuant to Penal Code (PC) Section 1170.12(a)(5), once the inmate has been physically placed in CDC's custody the total amount of credit awarded shall not exceed one-fifth of the total term of imprisonment. At the time of resentencing, the inmates accrued time and conduct credits have been calculated at a rate greater than one-fifth thus giving the inmate excessive conduct

credits. To alleviate this problem, court cases resentenced pursuant to People v. Romero, once in CDC's custody, will have their credits adjusted so that they will no longer accrue at a rate greater than one-fifth.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

Subsection 3371.1(h) is adopted to include that inmates convicted of a felony with one or more prior felony convictions shall not be awarded behavior and/or work credits that exceed one-fifth of the term of imprisonment imposed. It also includes that this limitation commences on the original received date and that resentencing connected with the same felony will receive a maximum credit accrual rate of 20 percent only if the trial court uses at least one prior felony conviction for the purposes of determining the term of imprisonment upon resentencing. Thus these specifications are necessary to ensure consistency when computing custody credits for inmates.